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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ATKINSON, CHRISTOPHER MARK

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/254,743

Applicant(s)

Weber et al.

Examiner

Atkinson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 2/14/01 & 7/15/03
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 34-55 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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***Response to Amendment***

Applicant's arguments filed 2/14/2001 and 7/15/2003 have been fully considered but they are not persuasive.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

Claims 34-46 and 48-55 are rejected under 35 U.S.C. § 103 as being unpatentable over Fischer in view of Herbst and Musgrave et al. The document of Fischer in the illustration discloses all the claimed features of the invention with the exception of the tubes being mats, the spacer being a plurality of spacers, a sound insulating fleece or holes and a carrying system.

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The patent of Herbst in Figures 1-5 discloses that it is known to have a sound insulating (i.e. material and holes) ceiling carrying system and cooling tube mats in a plurality of ceiling panels for the purpose of reducing room noise, supporting the ceiling panels and for easy installation and repair. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Fischer a sound insulating (i.e. material and holes) ceiling carrying system and cooling tube mats in a plurality of ceiling panels for the purpose of reducing room noise, supporting the ceiling panels and for easy installing and repair as disclosed in Herbst. The sound reducing material being fleece is considered to be an obvious and well known sound reducing material in view of the sound reducing material disclosed in Herbst which does not solve any stated problem or produce any new and/or unexpected result.

The patent of Musgrave et al. in Figure 2 disclose that it is known to have a plurality of spacers and plaster panels for the purpose of supporting and attaching the cooling plate to a building structure and obtaining a fire resistant panel. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Fischer as modified, a plurality of spacers and plaster panels for the purpose of supporting and attaching the cooling plate to a building structure and obtaining a fire resistant panel as disclosed in Musgrave et al.

Claim 47 is rejected under 35 U.S.C. § 103 as being unpatentable over Fischer in view of Herbst and Musgrave et al. as applied to claims 1-4, 6-11 and 27-30 above, and further in view of Ingram. The document of Fischer as modified, discloses all the claimed features of the invention with the exception of the cooling tubes not in every panel.

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The document of Ingram in Figures 11 and 13 discloses that it is known not to have the cooling tubes in every cooling panel for the purpose of reducing the cost of installing the cooling system. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Fischer as modified, not to have the cooling tubes in every cooling panel for the purpose of reducing the cost of installing the cooling system as disclosed in Ingram.

### ***Response to Arguments***

Applicant's concerns directed toward the references not disclosing the claimed invention are not found persuasive. Fischer in the illustration discloses cooling tubes (5'), separate upper (3) and lower plates (4), spacer (2) and metal foil on the inner and/or outer surface of the plates (3,4). Herbst in Figures 1-5 discloses a sound insulating (i.e. materials and holes) ceiling carrying system and cooling tube mats (i.e. plastic tubes). Musgrave et al. in Figure 2 disclose that it is known to have a plurality of spacers at the ends of the panel.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious at the time the invention was made to a person having ordinary skill in

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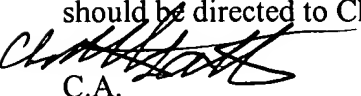
the art to employ in Fischer a plurality of spacers, spacers at the ends of the ceiling plates, for the purpose of supporting and attaching the cooling plate to a building structure as disclosed in Musgrave et al.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire **THREE MONTHS** from the date of this action. In the event a first response is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Atkinson whose telephone number is (703) 308-2603.

  
C.A.  
October 6, 2003

CHRISTOPHER ATKINSON  
PRIMARY EXAMINER